

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Mid America Care Foundation d/b/a Fair Oaks Health Care Center and Teamsters Local Union 325, International Brotherhood of Teamsters, AFL-CIO. Case 33-CA-12001**

April 2, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on November 20, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 2, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 33-RC-4070 (a/k/a 19-RC-13230). (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint. Thereafter, counsel for the Respondent and counsel for the General Counsel entered into a stipulation concerning certain allegations of the complaint.

On March 17, 1997, the General Counsel filed a Motion for Summary Judgment. On March 18, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 21, 1997, the Respondent filed a response.

**Ruling on Motion for Summary Judgment**

In its answers and response, and in the stipulation, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its contention that the unit was improperly certified by the Board in the representation proceeding because the unit contains supervisors as defined in Section 2(11) of the Act as well as professional and technical employees, office clerical, and confidential employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not

raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

(1) A current list of all unit employees, their work histories, classifications, seniority dates and pay roll histories.

(2) Documents and all other relevant information that demonstrate and explain all current work rules, practices and procedures concerning discipline and job assignments or reassignments etc.

(3) Documents and all other relevant information regarding all benefits inclusive of pension plan, insurance, vacations, sick days, holidays, and bereavement, as well as any other data that may be pertinent to meaningful negotiations.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer effectively denies that the information requested is necessary and relevant to the Union's duties as the exclusive representative of the unit employees, it is well established that such information is presumptively relevant and, unless the presumption is rebutted, must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Illinois corporation, with an office and place of business in South Beloit, Illinois, has been engaged in the business of health care as a long-term care facility. During the 12-month period ending December 31, 1995, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$1 million and purchased and received at its South Beloit, Illinois facility materials or services valued at more than \$50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor

<sup>1</sup> Member Higgins did not participate in the underlying representation proceeding. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held on July 24, 1996, the Union was certified on September 12, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time non-professional employees employed by the Employer at its South Beloit, Illinois facility; but excluding all office clerical employees, registered nurses, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

Since September 24 and October 25, 1996, the Union has requested the Respondent to bargain and to furnish information, and, since September 24, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after September 24, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Mid America Care Foundation d/b/a Fair Oaks Health Care Center, South Beloit, Illinois, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union 325, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time non-professional employees employed by the Employer at its South Beloit, Illinois facility; but excluding all office clerical employees, registered nurses, guards and supervisors as defined by the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Within 14 days after service by the Region, post at its facility in South Beloit, Illinois, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 33 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 20, 1996.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 2, 1997

---

William B. Gould IV, Chairman

---

Sarah M. Fox, Member

---

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local Union 325, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time non-professional employees employed by us at our South Beloit, Illinois facility; but excluding all office clerical employees, registered nurses, guards and supervisors as defined by the Act.

WE WILL furnish the Union the information that it requested on September 24 and October 25, 1996.

MID AMERICA CARE FOUNDATION D/B/A  
FAIR OAKS HEALTH CARE CENTER



The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with TEAMSTERS LOCAL UNION 325, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time non-professional employees employed by us at our South Beloit, Illinois facility; but excluding all office clerical employees, registered nurses, guards and supervisors as defined by the Act.

WE WILL furnish the Union the information that it requested on September 24 and October 25, 1996.

MID AMERICA CARE FOUNDATION d/b/a FAIR  
OAKS HEALTH CARE CENTER

---

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602-1246, Telephone 309-671-7068.